

REFERENCE TITLE: prime contracting deduction; university improvements

State of Arizona
House of Representatives
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HB 2307

Introduced by
Representatives Burns J, Ableser: Alvarez, Campbell CH, Hershberger,
Konopnicki, Lopez, Reagan, Schapira

AN ACT

AMENDING SECTION 42-5075, ARIZONA REVISED STATUTES; RELATING TO THE PRIME
CONTRACTING TRANSACTION PRIVILEGE TAX CLASSIFICATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 42-5075, Arizona Revised Statutes, is amended to
3 read:

4 42-5075. Prime contracting classification; exemptions;
5 definitions

6 A. The prime contracting classification is comprised of the business
7 of prime contracting and dealership of manufactured buildings. Sales for
8 resale to another dealership of manufactured buildings are not subject to
9 tax. Sales for resale do not include sales to a lessor of manufactured
10 buildings. The sale of a used manufactured building is not taxable under
11 this chapter. The proceeds from alteration and repairs to a used
12 manufactured building are taxable under this section.

13 B. The tax base for the prime contracting classification is sixty-five
14 per cent of the gross proceeds of sales or gross income derived from the
15 business. The following amounts shall be deducted from the gross proceeds of
16 sales or gross income before computing the tax base:

17 1. The sales price of land, which shall not exceed the fair market
18 value.

19 2. Sales and installation of groundwater measuring devices required
20 under section 45-604 and groundwater monitoring wells required by law,
21 including monitoring wells installed for acquiring information for a permit
22 required by law.

23 3. The sales price of furniture, furnishings, fixtures, appliances,
24 and attachments that are not incorporated as component parts of or attached
25 to a manufactured building or the setup site. The sale of such items may be
26 subject to the taxes imposed by article 1 of this chapter separately and
27 distinctly from the sale of the manufactured building.

28 4. The gross proceeds of sales or gross income received from a
29 contract entered into for the construction, alteration, repair, addition,
30 subtraction, improvement, movement, wrecking or demolition of any building,
31 highway, road, railroad, excavation, manufactured building or other
32 structure, project, development or improvement located in a military reuse
33 zone for providing aviation or aerospace services or for a manufacturer,
34 assembler or fabricator of aviation or aerospace products within an active
35 military reuse zone after the zone is initially established or renewed under
36 section 41-1531. To be eligible to qualify for this deduction, before
37 beginning work under the contract, the prime contractor must have applied for
38 a letter of qualification from the department of revenue.

39 5. The gross proceeds of sales or gross income derived from a contract
40 to construct a qualified environmental technology manufacturing, producing or
41 processing facility, as described in section 41-1514.02, and from subsequent
42 construction and installation contracts that begin within ten years after the
43 start of initial construction. To qualify for this deduction, before
44 beginning work under the contract, the prime contractor must obtain a letter
45 of qualification from the department of revenue. This paragraph shall apply

1 for ten full consecutive calendar or fiscal years after the start of initial
2 construction.

3 6. The gross proceeds of sales or gross income from a contract to
4 provide for one or more of the following actions, or a contract for site
5 preparation, constructing, furnishing or installing machinery, equipment or
6 other tangible personal property, including structures necessary to protect
7 exempt incorporated materials or installed machinery or equipment, and
8 tangible personal property incorporated into the project, to perform one or
9 more of the following actions in response to a release or suspected release
10 of a hazardous substance, pollutant or contaminant from a facility to the
11 environment, unless the release was authorized by a permit issued by a
12 governmental authority:

13 (a) Actions to monitor, assess and evaluate such a release or a
14 suspected release.

15 (b) Excavation, removal and transportation of contaminated soil and
16 its treatment or disposal.

17 (c) Treatment of contaminated soil by vapor extraction, chemical or
18 physical stabilization, soil washing or biological treatment to reduce the
19 concentration, toxicity or mobility of a contaminant.

20 (d) Pumping and treatment or in situ treatment of contaminated
21 groundwater or surface water to reduce the concentration or toxicity of a
22 contaminant.

23 (e) The installation of structures, such as cutoff walls or caps, to
24 contain contaminants present in groundwater or soil and prevent them from
25 reaching a location where they could threaten human health or welfare or the
26 environment.

27 This paragraph does not include asbestos removal or the construction or use
28 of ancillary structures such as maintenance sheds, offices or storage
29 facilities for unattached equipment, pollution control equipment, facilities
30 or other control items required or to be used by a person to prevent or
31 control contamination before it reaches the environment.

32 7. The gross proceeds of sales or gross income that is derived from a
33 contract entered into for the installation, assembly, repair or maintenance
34 of machinery, equipment or other tangible personal property that is deducted
35 from the tax base of the retail classification pursuant to section 42-5061,
36 subsection B, or that is exempt from use tax pursuant to section 42-5159,
37 subsection B, and that does not become a permanent attachment to a building,
38 highway, road, railroad, excavation or manufactured building or other
39 structure, project, development or improvement. If the ownership of the
40 realty is separate from the ownership of the machinery, equipment or tangible
41 personal property, the determination as to permanent attachment shall be made
42 as if the ownership were the same. The deduction provided in this paragraph
43 does not include gross proceeds of sales or gross income from that portion of
44 any contracting activity which consists of the development of, or
45 modification to, real property in order to facilitate the installation,
46 assembly, repair, maintenance or removal of machinery, equipment or other

1 tangible personal property that is deducted from the tax base of the retail
2 classification pursuant to section 42-5061, subsection B or that is exempt
3 from use tax pursuant to section 42-5159, subsection B. For the purposes of
4 this paragraph, "permanent attachment" means at least one of the following:

- 5 (a) To be incorporated into real property.
- 6 (b) To become so affixed to real property that it becomes a part of
7 the real property.
- 8 (c) To be so attached to real property that removal would cause
9 substantial damage to the real property from which it is removed.

10 8. Through December 31, 2009, the gross proceeds of sales or gross
11 income received from a contract for constructing any lake facility
12 development in a commercial enhancement reuse district that is designated
13 pursuant to section 9-499.08 if the prime contractor maintains the following
14 records in a form satisfactory to the department and to the city or town in
15 which the property is located:

- 16 (a) The certificate of qualification of the lake facility development
17 issued by the city or town pursuant to section 9-499.08, subsection D.
- 18 (b) All state and local transaction privilege tax returns for the
19 period of time during which the prime contractor received gross proceeds of
20 sales or gross income from a contract to construct a lake facility
21 development in a designated commercial enhancement reuse district, showing
22 the amount exempted from state and local taxation.
- 23 (c) Any other information that the department considers to be
24 necessary.

25 9. The gross proceeds of sales or gross income attributable to the
26 purchase of machinery, equipment or other tangible personal property that is
27 exempt from or deductible from transaction privilege and use tax under:

- 28 (a) Section 42-5061, subsection A, paragraph 25 or 29.
- 29 (b) Section 42-5061, subsection B.
- 30 (c) Section 42-5159, subsection A, paragraph 13, subdivision (a), (b),
31 (c), (d), (e), (f), (i), (j) or (l).
- 32 (d) Section 42-5159, subsection B.

33 10. The gross proceeds of sales or gross income received from a
34 contract for the construction of an environmentally controlled facility for
35 the raising of poultry for the production of eggs and the sorting, cooling
36 and packaging of eggs.

37 11. The gross proceeds of sales or gross income that is derived from a
38 contract entered into with a person who is engaged in the commercial
39 production of livestock, livestock products or agricultural, horticultural,
40 viticultural or floricultural crops or products in this state for the
41 construction, alteration, repair, improvement, movement, wrecking or
42 demolition or addition to or subtraction from any building, highway, road,
43 excavation, manufactured building or other structure, project, development or
44 improvement used directly and primarily to prevent, monitor, control or
45 reduce air, water or land pollution.

1 12. The gross proceeds of sales or gross income that is derived from
2 the installation, assembly, repair or maintenance of clean rooms that are
3 deducted from the tax base of the retail classification pursuant to section
4 42-5061, subsection B, paragraph 17.

5 13. For taxable periods beginning from and after June 30, 2001, the
6 gross proceeds of sales or gross income derived from a contract entered into
7 for the construction of a residential apartment housing facility that
8 qualifies for a federal housing subsidy for low income persons over sixty-two
9 years of age and that is owned by a nonprofit charitable organization that
10 has qualified under section 501(c)(3) of the internal revenue code.

11 14. For taxable periods beginning from and after December 31, 1996 and
12 ending before January 1, 2011, the gross proceeds of sales or gross income
13 derived from a contract to provide and install a solar energy device. The
14 contractor shall register with the department as a solar energy
15 contractor. By registering, the contractor acknowledges that it will make
16 its books and records relating to sales of solar energy devices available to
17 the department for examination.

18 15. The gross proceeds of sales or gross income derived from a contract
19 entered into for the construction of a launch site, as defined in 14 Code of
20 Federal Regulations section 401.5.

21 16. The gross proceeds of sales or gross income derived from a contract
22 entered into for the construction of a domestic violence shelter that is
23 owned and operated by a nonprofit charitable organization that has qualified
24 under section 501(c)(3) of the internal revenue code.

25 17. The gross proceeds of sales or gross income derived from contracts
26 to perform postconstruction treatment of real property for termite and
27 general pest control, including wood destroying organisms.

28 18. The gross proceeds of sales or gross income received from contracts
29 entered into before July 1, 2006 for constructing a state university research
30 infrastructure project if the project has been reviewed by the joint
31 committee on capital review before the university enters into the
32 construction contract for the project. For the purposes of this paragraph,
33 "research infrastructure" has the same meaning prescribed in section 15-1670.

34 19. The gross proceeds of sales or gross income received from a
35 contract for the construction of any building, or other structure, project,
36 development or improvement owned by a qualified business under section
37 41-1516 for harvesting or the initial processing of qualifying forest
38 products removed from qualifying projects as defined in section 41-1516 if
39 actual construction begins before January 1, 2010. To qualify for this
40 deduction, the prime contractor must obtain a letter of qualification from
41 the department of commerce before beginning work under the contract.

42 20. The gross proceeds of sales or gross income received from a
43 contract for the construction of any building or other structure associated
44 with motion picture production in this state. To qualify for the deduction,
45 at the time the contract is entered into the motion picture production
46 company must present to the prime contractor its certificate that is issued

1 pursuant to section 42-5009, subsection H and that establishes its
2 qualification for the deduction.

3 21. Any amount of the gross proceeds of sales or gross income from a
4 contract that constitutes development or impact fees paid to the state or a
5 local government to offset governmental costs of providing public
6 infrastructure, public safety and other public services to a development.

7 22. THE GROSS PROCEEDS OF SALES OR GROSS INCOME RECEIVED FROM A
8 CONTRACT ENTERED INTO FOR THE CONSTRUCTION OF ANY BUILDINGS AND ASSOCIATED
9 IMPROVEMENTS THAT ARE FOR THE BENEFIT OF A UNIVERSITY THAT IS UNDER THE
10 JURISDICTION OF THE ARIZONA BOARD OF REGENTS. THE DEDUCTION IS NOT ALLOWED
11 WITH RESPECT TO ANY STATE MONIES USED TO FUND THE CONSTRUCTION OF THE
12 BUILDING AND ASSOCIATED IMPROVEMENTS. TO QUALIFY FOR THE DEDUCTION:

13 (a) THE PRIME CONTRACTOR MUST AGREE IN WRITING WITH THE DEPARTMENT TO
14 PAY THE EQUIVALENT AMOUNT OF STATE TRANSACTION PRIVILEGE TAX DUE UNDER THIS
15 TITLE TO THE CITY OR TOWN IN WHICH THE BUILDING IS CONSTRUCTED.

16 (b) A CITY OR TOWN MUST AGREE IN WRITING WITH THE DEPARTMENT THAT THE
17 MONIES RECEIVED UNDER SUBDIVISION (a) OF THIS PARAGRAPH WILL BE USED TO PAY
18 FOR INFRASTRUCTURE IMPROVEMENTS THAT RELATE DIRECTLY TO THE CONSTRUCTION OF
19 THE BUILDING FOR WHICH THE DEDUCTION IS CLAIMED UNDER THIS PARAGRAPH AND THAT
20 THE CITY OR TOWN WILL PAY FOR AT LEAST TWENTY PER CENT OF THE COSTS OF THOSE
21 INFRASTRUCTURE IMPROVEMENTS. FOR THE PURPOSES OF THIS SUBDIVISION,
22 "INFRASTRUCTURE" MEANS WATER OR SEWER LINES, SIDEWALKS, STREETS, ROADS,
23 TRAFFIC CONTROL AND PUBLIC PARKING.

24 (c) A CITY OR TOWN MUST AGREE IN WRITING WITH THE DEPARTMENT THAT THE
25 CITY OR TOWN WILL PAY AN AMOUNT THAT IS EQUAL TO THE AMOUNT OF MONIES THAT
26 WOULD HAVE BEEN ALLOCATED PURSUANT TO SECTION 42-5029, SUBSECTION D,
27 PARAGRAPHS 1 THROUGH 3 AND SUBSECTION E. IF THE CITY OR TOWN RECEIVES MONIES
28 UNDER SUBDIVISION (a) OF THIS PARAGRAPH THAT EXCEEDS EIGHTY PER CENT OF THE
29 ACTUAL COSTS OF THE INFRASTRUCTURE IMPROVEMENTS, THE EXCESS MONIES SHALL
30 REVERT TO THE STATE GENERAL FUND.

31 C. Entitlement to the deduction pursuant to subsection B, paragraph 7
32 of this section is subject to the following provisions:

33 1. A prime contractor may establish entitlement to the deduction by
34 both:

35 (a) Marking the invoice for the transaction to indicate that the gross
36 proceeds of sales or gross income derived from the transaction was deducted
37 from the base.

38 (b) Obtaining a certificate executed by the purchaser indicating the
39 name and address of the purchaser, the precise nature of the business of the
40 purchaser, the purpose for which the purchase was made, the necessary facts
41 to establish the deductibility of the property under section 42-5061,
42 subsection B, and a certification that the person executing the certificate
43 is authorized to do so on behalf of the purchaser. The certificate may be
44 disregarded if the prime contractor has reason to believe that the
45 information contained in the certificate is not accurate or complete.

1 2. A person who does not comply with paragraph 1 of this subsection
2 may establish entitlement to the deduction by presenting facts necessary to
3 support the entitlement, but the burden of proof is on that person.

4 3. The department may prescribe a form for the certificate described
5 in paragraph 1, subdivision (b) of this subsection. The department may also
6 adopt rules that describe the transactions with respect to which a person is
7 not entitled to rely solely on the information contained in the certificate
8 provided in paragraph 1, subdivision (b) of this subsection but must instead
9 obtain such additional information as required in order to be entitled to the
10 deduction.

11 4. If a prime contractor is entitled to a deduction by complying with
12 paragraph 1 of this subsection, the department may require the purchaser who
13 caused the execution of the certificate to establish the accuracy and
14 completeness of the information required to be contained in the certificate
15 which would entitle the prime contractor to the deduction. If the purchaser
16 cannot establish the accuracy and completeness of the information, the
17 purchaser is liable in an amount equal to any tax, penalty and interest which
18 the prime contractor would have been required to pay under article 1 of this
19 chapter if the prime contractor had not complied with paragraph 1 of this
20 subsection. Payment of the amount under this paragraph exempts the purchaser
21 from liability for any tax imposed under article 4 of this chapter. The
22 amount shall be treated as a transaction privilege tax to the purchaser and
23 as tax revenues collected from the prime contractor in order to designate the
24 distribution base for purposes of section 42-5029.

25 D. Subcontractors or others who perform services in respect to any
26 improvement, building, highway, road, railroad, excavation, manufactured
27 building or other structure, project, development or improvement are not
28 subject to tax if they can demonstrate that the job was within the control of
29 a prime contractor or contractors or a dealership of manufactured buildings
30 and that the prime contractor or dealership is liable for the tax on the
31 gross income, gross proceeds of sales or gross receipts attributable to the
32 job and from which the subcontractors or others were paid.

33 E. Amounts received by a contractor for a project are excluded from
34 the contractor's gross proceeds of sales or gross income derived from the
35 business if the person who hired the contractor executes and provides a
36 certificate to the contractor stating that the person providing the
37 certificate is a prime contractor and is liable for the tax under article 1
38 of this chapter. The department shall prescribe the form of the
39 certificate. If the contractor has reason to believe that the information
40 contained on the certificate is erroneous or incomplete, the department may
41 disregard the certificate. If the person who provides the certificate is not
42 liable for the tax as a prime contractor, that person is nevertheless deemed
43 to be the prime contractor in lieu of the contractor and is subject to the
44 tax under this section on the gross receipts or gross proceeds received by
45 the contractor.

1 F. Every person engaging or continuing in this state in the business
2 of prime contracting or dealership of manufactured buildings shall present to
3 the purchaser of such prime contracting or manufactured building a written
4 receipt of the gross income or gross proceeds of sales from such activity and
5 shall separately state the taxes to be paid pursuant to this section.

6 G. For the purposes of section 42-5032.01, the department shall
7 separately account for revenues collected under the prime contracting
8 classification from any prime contractor engaged in the preparation or
9 construction of a multipurpose facility, and related infrastructure, that is
10 owned, operated or leased by the tourism and sports authority pursuant to
11 title 5, chapter 8.

12 H. The gross proceeds of sales or gross income derived from a contract
13 for lawn maintenance services are not subject to tax under this section if
14 the contract does not include landscaping activities. Lawn maintenance
15 service is a service pursuant to section 42-5061, subsection A, paragraph 1,
16 and includes lawn mowing and edging, weeding, repairing sprinkler heads or
17 drip irrigation heads, seasonal replacement of flowers, refreshing gravel,
18 lawn de-thatching, seeding winter lawns, leaf and debris collection and
19 removal, tree or shrub pruning or clipping, garden and gravel raking and
20 applying pesticides, as defined in section 3-361, and fertilizer materials,
21 as defined in section 3-262.

22 I. The gross proceeds of sales or gross income derived from
23 landscaping activities are subject to tax under this section. Landscaping
24 includes installing lawns, grading or leveling ground, installing gravel or
25 boulders, planting trees and other plants, felling trees, removing or
26 mulching tree stumps, removing other imbedded plants, building or modifying
27 irrigation berms, repairing sprinkler or watering systems, installing
28 railroad ties and installing underground sprinkler or watering systems.

29 J. The portion of gross proceeds of sales or gross income attributable
30 to the actual direct costs of providing architectural or engineering services
31 that are incorporated in a contract is not subject to tax under this
32 section. For the purposes of this subsection, "direct costs" means the
33 portion of the actual costs that are directly expended in providing
34 architectural or engineering services.

35 K. Operating a landfill or a solid waste disposal facility is not
36 subject to taxation under this section, including filling, compacting and
37 creating vehicle access to and from cell sites within the
38 landfill. Constructing roads to a landfill or solid waste disposal facility
39 and constructing cells within a landfill or solid waste disposal facility may
40 be deemed prime contracting under this section.

41 L. The following ~~applies~~ APPLY to manufactured buildings:

42 1. For sales in this state where the ~~dealer~~ DEALERSHIP of manufactured
43 buildings contracts to deliver the building to a setup site or to perform the
44 setup in this state, the taxable situs is the setup site.

45 2. For sales in this state where the ~~dealer~~ DEALERSHIP of manufactured
46 buildings does not contract to deliver the building to a setup site or does

1 not perform the setup, the taxable situs is the location of the dealership
2 where the building is delivered to the buyer.

3 3. For sales in this state where the ~~dealer~~ DEALERSHIP of manufactured
4 buildings contracts to deliver the building to a setup site that is outside
5 this state, the situs is outside this state and the transaction is excluded
6 from tax.

7 M. For the purposes of this section:

8 1. "Contracting" means engaging in business as a contractor.

9 2. "Contractor" is synonymous with the term "builder" and means any
10 person, firm, partnership, corporation, association or other organization, or
11 a combination of any of them, that undertakes to or offers to undertake to,
12 or purports to have the capacity to undertake to, or submits a bid to, or
13 does personally or by or through others, construct, alter, repair, add to,
14 subtract from, improve, move, wreck or demolish any building, highway, road,
15 railroad, excavation, manufactured building or other structure, project,
16 development or improvement, or to do any part of such a project, including
17 the erection of scaffolding or other structure or works in connection with
18 such a project, and includes subcontractors and specialty contractors. For
19 all purposes of taxation or deduction, this definition shall govern without
20 regard to whether or not such contractor is acting in fulfillment of a
21 contract.

22 3. "Dealership of manufactured buildings" means a dealer who either:

23 (a) Is licensed pursuant to title 41, chapter 16 and who sells
24 manufactured buildings to the final consumer.

25 (b) Supervises, performs or coordinates the excavation and completion
26 of site improvements, setup or moving of a manufactured building including
27 the contracting, if any, with any subcontractor or specialty contractor for
28 the completion of the contract.

29 4. "Manufactured building" means a manufactured home, mobile home or
30 factory-built building, as defined in section 41-2142.

31 5. "Prime contracting" means engaging in business as a prime
32 contractor.

33 6. "Prime contractor" means a contractor who supervises, performs or
34 coordinates the construction, alteration, repair, addition, subtraction,
35 improvement, movement, wreckage or demolition of any building, highway, road,
36 railroad, excavation, manufactured building or other structure, project,
37 development or improvement including the contracting, if any, with any
38 subcontractors or specialty contractors and who is responsible for the
39 completion of the contract.

40 7. "Sale of a used manufactured building" does not include a lease of
41 a used manufactured building.